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10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 San Francisco Division

13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 WELLNESS SUPPORT NETWORK, INC.,  
17 a corporation, ROBERT HELD,  
18 individually and as an officer of Wellness  
Support Network, Inc., and ROBYN HELD,  
19 individually and as an officer of Wellness  
Support Network, Inc.,

20 Defendants.  
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Case No. 3:10-cv-04879-JCS

STIPULATION AND ~~PROPOSED~~  
ORDER TO EXTEND CONTINUANCE  
AND TO SET NEW SCHEDULE;  
DECLARATION OF LAURA FREMONT  
IN SUPPORT

Date of next CMC: August 31, 2012

Time: 1:30 p.m.

Place: Courtroom G, 15th Floor

Judge: Hon. Joseph C. Spero

1 Pursuant to L. R. 6-2 and L.R. 7-12, Plaintiff Federal Trade Commission (“FTC”) and  
2 defendants Wellness Support Network, Inc., Robert Held, and Robyn Held (“Defendants”)  
3 respectfully request that the Court extend the continuance in this case to September 30, 2012  
4 to facilitate settlement, and approve the below schedule the parties propose to follow in the  
5 event settlement is not achieved.

6 **A. Extension of Continuance to September 30, 2012**

7 With the assistance of the Honorable Magistrate Judge Corley, the parties have agreed  
8 in principle to a stipulated judgment and final order that will fully resolve this case. The  
9 parties, as a condition of settlement, agreed to consult on certain steps that would be required  
10 for Defendants to comply with the order. To facilitate the completion of these steps, the  
11 parties stipulated, and on May 21, 2012 this court ordered, that deadlines in this matter be  
12 continued three months (Dkt. #74). The parties also agreed to meet for a subsequent  
13 settlement conference with Judge Corley towards the end of the process. Due to the need to  
14 coordinate the schedules of counsel and Judge Corley, the settlement conference will take  
15 place on September 7, 2012 (see *Clerk’s Notice Scheduling Settlement Conference*, entered  
16 into the ECF system on July 19, 2012; no document number assigned). Because the existing  
17 continuance granted by the Court’s previous Order (Dkt. 74) would expire before the  
18 settlement conference, the parties respectfully request the Court to extend the existing  
19 continuance until September 30, 2012.

20 Should Defendants sign the stipulated judgment and order, counsel for the FTC will  
21 submit the proposed final order to the five members of the Federal Trade Commission, with a  
22 recommendation that the Commission approve it. All settlements negotiated by FTC  
23 attorneys and signed by defendants must be voted on by the Commission. The approval  
24 process takes some time given the number and breadth of matters pending votes of the  
25 Commission. The parties are not requesting, however, a continuance past September 30 at  
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1 this time.

2 **B. Proposed Schedule Should Settlement Not be Reached**

3 The parties remain hopeful that the settlement the parties have reached in principle  
4 will be finalized. In the event that by September 30 it is obvious that litigation must resume,  
5 however, counsel have conferred and stipulated to a proposed schedule.

6 At the time deadlines were continued to provide time for settlement (Dkt. #74), the  
7 parties had already propounded lengthy discovery on opponents. Although deadlines were  
8 continued, counsel for the parties have nevertheless attempted to resolve known issues so that  
9 discovery can continue expeditiously should litigation resume. The parties have, for example,  
10 agreed to a protective order (filed concurrently with this Stipulation). The protective order  
11 addresses concerns Defendants expressed regarding production of certain documents and  
12 information. The protective order will thus enable prompt provision of withheld documents  
13 and information at the expiration of the continuance, without resort to motion practice. The  
14 parties have also committed to providing all other outstanding discovery responses  
15 immediately upon expiration of the continuance.

16 In spite of these good faith efforts to expedite this litigation, after frank discussion  
17 both parties believe some discovery motion practice is likely. The proposed schedule reflects  
18 a very modest amount of time to account for that likelihood, and to permit provision of any  
19 disputed materials in time for use at deposition. In addition, the schedule reflects the  
20 unavailability of expert witnesses for deposition over the December holidays (although the  
21 schedule does contemplate production of expert reports shortly after the holidays end).  
22 Lastly, the proposed schedule provides a slightly longer dispositive motion briefing schedule  
23 than provided for motions under the local rules, to allow the parties sufficient time to  
24 thoroughly brief the myriad issues in this case and increase the possibility of resolving this  
25 matter without need for a trial.

**C. Proposed Revised Schedule**

The parties propose the following schedule should litigation resume:

1. Parties shall exchange identities and *curriculum vitae* of primary experts by November 13, 2012.
2. All non-expert discovery shall be completed by December 10, 2012.
3. All primary expert reports shall be exchanged by January 10, 2013.
4. All expert rebuttal reports shall be exchanged by February 8, 2013.
5. All expert discovery shall be completed by March 15, 2013.
6. Dispositive motions shall be filed by April 26, 2013.
7. Oppositions to dispositive motions shall be filed by May 17, 2013.
8. Replies to oppositions to dispositive motions shall be filed by May 31, 2013.

**IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES** through their respective attorneys of record as follows:

WHEREAS the parties have proposed a settlement in principle, approval of the proposed settlement appears likely, and the settlement will preclude the need for further trial preparation; and

WHEREAS should it become clear by September 30, 2012 that litigation must resume, the parties have consulted on a schedule therefor;

THEREFORE, the parties have stipulated and agreed, subject to the approval of the Court, that the existing continuance in this matter be extended to September 30, 2012, and that should litigation resume at the end of the continuance, the parties will abide by the schedule proposed in this stipulation.

SO STIPULATED:

DATED: August 21, 2012

/s/ Laura Fremont  
Laura Fremont

Kenneth H. Abbe  
Attorneys for Plaintiff  
Federal Trade Commission

(The filer attests that concurrence in the filing of this document has been obtained from the other signatories.)

DATED: August 21, 2012

\_\_\_\_s/Andrew S. Ittleman\_\_\_\_  
Mitchell Fuerst  
Andrew S. Ittleman  
Fuerst Ittleman David & Joseph PL  
Attorneys for Defendants  
Wellness Support Network, Inc., Robert Held,  
and Robyn Held

PURSUANT TO STIPULATION, IT IS SO ORDERED. IT IS HEREBY FURTHER  
ORDERED THAT the further case management conference scheduled for August 31, 2012, at  
1:30 p.m., has been continued to **October 12, 2012, at 1:30 p.m.** The updated joint case  
management conference statement shall be due by October 5, 2012.

DATED: August 23, 2012

/s/ Joseph C. Spero  
JOSEPH C. SPERO  
UNITED STATES MAGISTRATE JUDGE

**DECLARATION OF LAURA FREMONT****IN SUPPORT OF STIPULATION TO EXTEND CONTINUANCE AND SET NEW****SCHEDULE**

I, LAURA FREMONT, declare as follows:

1. I am an attorney with the Federal Trade Commission, the plaintiff in the above-captioned action. I make this Declaration in support of the foregoing Stipulation to Extend Continuance and Set New Schedule. I have personal knowledge of each of the following facts, and would and could competently testify thereto if called upon to do so in a court of law.

2. **Reasons for the requested enlargement of time (Local Rule 6-2(a)(1)):**  
With the assistance of the Honorable Magistrate Judge Jacqueline Scott Corley, the parties have agreed in principle to a stipulated judgment and final order that will fully resolve this case. The parties, as a condition of settlement, agreed to consult on certain steps that would be required for Defendants to comply with the order, and agreed to meet with Judge Corley towards the end of the process. Due to the necessity of coordinating the schedules of counsel and Judge Corley, the settlement conference will take place on September 7, 2012. Because the existing continuance (see Dkt. #74) would expire before the settlement conference is held, however, the parties respectfully request the Court to extend the existing continuance until September 30, 2012. Once completed, counsel for the FTC will submit the proposed final order to the Commission, with a recommendation that the Commission approve it.. All settlements negotiated by FTC attorneys and signed by defendants must be voted on and approved by the Commission.

3. **Disclosure of all previous time modifications (Local Rule 6-2(a)(2)):** The FTC filed its Complaint (Dkt #1) in this matter on October 28, 2010. Defendants' initial deadline to respond to the Complaint was November 26, 2010. On November 24, 2010, the

1 parties filed a stipulation (Dkt #5) to extend that deadline to December 29, 2010; to set the  
2 deadline for Plaintiff to file its opposition to any papers filed by Defendants responsive to the  
3 Complaint to January 14, 2011; and to set the hearing on such matters for February 4, 2011.  
4 The Court so ordered on November 29, 2010 (Dkt #6).

5 On December 15, 2010, the parties filed a stipulation (Dkt #7) to modify the times set  
6 in the Court's *Order Setting Initial Case Management Conference and ADR Deadlines* (Dkt  
7 #3). The Court so ordered on December 15, 2010 (Dkt #8).

8 On January 26, 2011, the parties filed a *Second Stipulation to Revise Schedule* (Dkt  
9 #21) to modify the times set in the Court's *Order Setting Initial Case Management*  
10 *Conference and ADR Deadlines* (Dkt #3). The Court so ordered on January 27, 2011 (Dkt  
11 #22).

12 On April 4, 2011, the Court entered an Order (Dkt #24) granting in part and denying in  
13 part Defendants' *Motion to Dismiss Complaint*. As a result of this Order, the parties filed a  
14 Joint Stipulation (Dkt # 25) on April 18, 2011 to provide time frames for Plaintiff to re-plead  
15 its Complaint in part and for Defendants to file responsive papers. The Court so ordered on  
16 April 18, 2011 (Dkt #26).

17 On May 12, 2011, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #28) to  
18 extend by 20 days the time for Defendants to file pleadings responsive to Plaintiff's *First*  
19 *Amended Complaint* (Dkt. #27), and to extend by 20 days the deadlines for the parties to  
20 perform the tasks required by the Court's case management orders. The Court so ordered on  
21 May 16, 2011. (Dkt. #29).

22 On June 15, 2011, the parties filed a *Joint Stipulation* (Dkt. #32) to extend the  
23 deadlines for the Plaintiff to file its opposition to Defendants' *Motion to Dismiss*, the  
24 Defendants' reply, and the deadlines for the parties to perform the tasks required by the  
25 Court's case management orders. The Court so ordered on June 16, 2011. (Dkt. #33).

1 On June 28, 2011, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #34) to  
2 extend the deadlines for the Defendants to file their *Reply* to Plaintiff's *Opposition to*  
3 *Defendants' Motion to Dismiss*. The Court so ordered on June 29, 2011. (Dkt. #36).

4 On September 7, 2011, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt.  
5 #42) to extend the deadlines for the parties to exchange initial disclosures. The Court so  
6 ordered on September 29, 2011. (Dkt. #43).

7 On November 8, 2011, the parties filed a *Joint Stipulation to Revise Schedule Re:*  
8 *Exchange of Reports and Settlement Conference* (Dkt. #53) to extend deadlines for the  
9 exchange of expert reports for settlement purposes only and to reschedule the case settlement  
10 conference in this matter. The Court so ordered on November 9, 2011. (Dkt. #54).

11 On January 18, 2012, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #62)  
12 to extend deadlines for the exchange of expert reports for settlement purposes only, to  
13 reschedule the case management conference in this matter, and to reschedule the case  
14 settlement conference in this matter. The Court so ordered on January 23, 2012. (Dkt. # 63).

15 On March 13, 2012, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #65)  
16 to reschedule the Settlement Conference before the Honorable Judge Corley from May 4 to  
17 May 11, 2012. The Court so ordered on March 15, 2012 (Dkt. #66).

18 On May 18, 2012, the parties filed a *Stipulation and Proposed Order Continuing*  
19 *Deadlines for Three Months Pending Settlement Review* (Dkt. #73), to give the parties the  
20 opportunity to take certain steps agreed to at the May 11, 2012 settlement conference with  
21 Judge Corley. The Court so ordered on May 21, 2012 (Dkt.#74).

22 A subsequent settlement conference is scheduled to take place on September 7, 2012  
23 (No document number; see *Clerk's Notice Scheduling Settlement Conference*, entered into the  
24 ECF system on July 19, 2012).

25 **4. Description of the effect the requested time modification would have on**  
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1 **the schedule for the case (Local Rule 6-2(a)(3)):** The proposed time modifications would  
2 (1) extend the current continuance to September 30, 2012; and (2) set a schedule for  
3 resumption of litigation should settlement not be reached.

4 I declare under penalty of perjury under the laws of the United States of America that  
5 the foregoing is true and correct, and that this Declaration was executed on August 21, 2012, at  
6 San Francisco, California.

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8 \_\_\_\_\_s/ Laura Fremont\_\_\_\_\_

9 Laura Fremont  
10 Attorney for Plaintiff  
11 Federal Trade Commission  
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